IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

WP(C).No. 21118 of 2006(L)

AGAINST THE ORDER DATED / / IN IA.2048/2005 IN OS.27/2004 of MUSNIFF COURT,ADOOR

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PETITIONER:

OMANA SASIDHARAN,
SWAPANAM VEEDU, ARUKALICKALKIZHAKKUM MURI,
EZHAMKULAM VILLAGE.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS:

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1. **SREEDHARANACHARI,**
   KUNNATHUPARACKAL VEEDU, ARUKALICKAL KIZHAKKUM MURI
   EZHAMKULAM VILLAGE.

2. **SREEKUMAR,**
   KUNNATHUPARACKAL VEEDU, ARUKALICKAL KIZHAKKUM MURI
   EZHAMKULAM VILLAGE.

3. **BIJU,**
   KUNNATHUPARACKAL VEEDU, ARUKALICKAL KIZHAKKUM MURI
   EZHAMKULAM VILLAGE.

BY ADV. SRI.JOHNSON P.JOHN
SRI.BABY MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.21118/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P.1:- COPY OF THE PLAINT IN OS. NO.27/2004 OF THE MUNSIFF'S COURT, ADOOR DT.20.11.03.

EXT.P2:- COPY OF THE IA. NO.2048/05 IN OS. NO 27/04 OF THE MUNSIFF'S COURT, ADOOR DT.4.10.05.

EXT.P3:- COPY OF THE ORDER OF THE MUNSIFF'S COURT, ADOOR IN IA. NO.2048/05 IN OS. NO.27/04 DT.3.4.2006.

/TRUE COPY/

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M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO. 21118 OF 2006

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Dated this the 19th day January of 2007

JUDGMENT

Petitioner is plaintiff and respondents defendants in O.S.27/04, on the file of Munsiff Court, Adoor. Petitioner is the daughter of first respondent. Plaint schedule property, was part of the property, which originally belonged to first respondent and his deceased wife. Subsequent to her death on 24.7.02, as per registered partition deed No.608/02 the properties were divided and the western portion was allotted to first respondent and eastern portion to petitioner. As per the partition deed, the property allotted to the petitioner is having an extent of 1.83 Ares. Petitioner instituted the suit for fixation of the western boundary which separate the property of first respondent from her property. Respondents 2 and 3 were impleaded as a subsequent assignees from first respondent. A Commission was appointed.

Commissioner submitted a report and plan. As per the report and plan, plaint schedule property allotted to petitioner is having only an extent of 1.64 Ares. There is a building encroaching upon the said property. Petitioner therefore filed I.A.2048/05, an application under Order VI Rule 17 of Code of Civil Procedure to amend the plaint. It was opposed by respondents contending that the building is aged more than 20 years and the claim for its demolition is barred by time and therefore the plaint cannot be allowed to be amended. Under Ext.P3 order learned Munsiff dismissed the application. It is challenged in this petition filed under Article 227 of the Constitution of India.

2. Learned counsel appearing for the petitioner and respondents were heard.

3. Though learned counsel appearing for respondents argued that, as the building is aged more than 20 years petitioner is not entitled to get a decree for demolition of the building on the ground that the claim is barred by limitation, that question is to be decided in the suit and

respondents are entitled to take up the contention in the additional written statement to be filed. Eventhough it was argued that the building is in the property allotted to first respondent, under the partition deed and therefore petitioner has no right over the land where the building stands that is also a question to be decided in the suit and not in an application for amendment of the plaint. Moreover, the plaint schedule property and the eastern property were owned by petitioner and first respondent till it was divided in 2002, as per partition deed 608/02. If so the plea of bar of limitation may not lie. In such circumstance, Ext.P3 order is quashed. I.A.2048/05 stands allowed. Petitioner is permitted to amend the plaint as sought for. Respondents are entitled to file a written statement raising all available contentions.

Writ Petition disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006